UNITED
NATIONS

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Economic and Social Council

Distr.
GENERAL

E/C.10/1991/8
19 February 1991

ORIGINAL: ENGLISH

COMMISSION ON TRANSNATIONAL CORPORATIONS
Seventeenth session
10-19 April 1991
Item 7 (a) of the provisional agenda*

WORK RELATED TO THE CODE OF CONDUCT ON TRANSNATIONAL CORPORATIONS AND OTHER INTERNATIONAL ARRANGEMENTS AND AGREEMENTS: PROGRESS MADE IN THE WORK ON THE CODE OF CONDUCT ON TRANSNATIONAL CORPORATIONS

Progress made in the work on the code of conduct on transnational corporations

Report of the Secretary General

SUMMARY

During 1990, renewed efforts were made to conclude the negotiations on the code of conduct on transnational corporations. Following intensive consultations, during which a number of suggestions were made for the resolution of the outstanding issues, a new text of the draft code was proposed at the reconvened special session of the Commission. The Economic and Social Council decided to request the General Assembly to determine the best course of action on the code. The General Assembly confirmed that there was substantial understanding on the contents of the draft code, and decided to intensify consultations aimed at achieving an early agreement on the code, for adoption by the General Assembly at its forty-sixth session.

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INTRODUCTION

1. At its sixteenth session, the Commission on Transnational Corporations requested the United Nations Centre on Transnational Corporations to prepare a report on the status of the negotiations on the code of conduct on transnational corporations to be submitted to the Commission at its seventeenth session. The present report has been prepared in response to that request. It reviews the progress made on the code negotiations since the sixteenth session and concludes with the General Assembly mandate for conclusion of the negotiations.

I. PROGRESS MADE ON THE CODE NEGOTIATIONS

2. Pursuant to Economic and Social Council resolution 1989/24, the Chairman of the special session of the Commission, in collaboration with the Executive Director of the United Nations Centre on Transnational Corporations, undertook intensive consultations with a view to resuming formal negotiations on the code during 1990.

3. At its meeting on 23 January 1990, the Bureau of the special session of the Commission considered various possibilities with respect to the code negotiations, namely:

(a) To suspend the negotiations and adjourn the reconvened special session sine die;

(b) To submit the text of the code (E/1988/39/Add.1) to the Economic and Social Council for adoption as a binding instrument or a non-binding set of provisions;

(c) To conclude negotiations as soon as possible.

4. The Bureau agreed to recommend the third option to the Commission on the understanding that further negotiations would entail only minor changes in the current text of the draft code and would be concluded before July 1990. 1/ During January and May 1990, the enlarged Bureau of the reconvened special session of the Commission held informal consultations with a view to resolving the outstanding issues in the text of the draft code circulated by the Chairman in 1988 (E/1988/39/Add.1, appendix). On 26 January 1990, the group of Western European and other States identified a number of provisions that, in their view, needed to be refined. These related to the question of a reference to international law/international obligations, non-interference in internal affairs, respect for national sovereignty, nationalization and compensation, dispute settlement, national treatment and transfer of payments. The group of Western European and other States submitted formulations for addressing those issues. They noted that some agreed formulations had to be reviewed in the light of the changed international situation. Among them were the provisions referring to Namibia's independence and the linkage between the code and other related international instruments. 2/

5. During the discussions that followed, two of the most difficult outstanding issues were settled, namely, the question of non-interference in the internal affairs of host countries and the standard governing nationalization and compensation. In the latter case, the formulation was subject to a satisfactory resolution of the question of an appropriate reference to international law (see E/1990/94, annex).

6. The reconvened special session of the Commission was held on 24 May 1990. It was not possible to reach consensus during the session on the remaining outstanding issues. In an effort to reach compromise while preserving the agreed texts, the Chairman announced that he would transmit the text of a draft code to the Economic and Social Council for it to decide on the best course of action. The text transmitted to the Council was based on the previous (1988) draft and also on the outcome of the informal discussions (see E/1990/4, annex).

7. The Economic and Social Council decided to transmit the draft code to the General Assembly at its forty-fifth session and requested the Assembly to decide on the future course of action (see Council decision 1990/274).

II. MANDATE FOR CONCLUSION OF THE NEGOTIATIONS ON THE CODE OF CONDUCT ON TRANSNATIONAL CORPORATIONS

8. The General Assembly, considering that the new text of the draft code needed to be discussed further before it could be accepted by consensus, unanimously adopted resolution 45/186, in which it recognized the desirability of reaching an early agreement on the formulation of a code of conduct on transnational corporations, reaffirmed the interest of Member States to resolve the remaining outstanding issues, confirmed that there was substantial understanding concerning the contents of the draft code of conduct (1990 text), and decided to request the President of the General Assembly, with the support of the Secretary-General, to arrange for intensive consultations aimed at achieving an early agreement on a code of conduct on transnational corporations, for presentation to and adoption by the General Assembly at its forty-sixth session.

Notes

1/ See informal paper dated 24 January 1990, circulated by the Chairman at the informal consultations of the enlarged Bureau, held in January 1990.

2/ See informal paper dated 26 January 1990, circulated by the spokesman for the group of Western European and other States during the informal consultations held in January 1990.